



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4250

September 23, 2019

Refer to NMFS No: 2019-01894

Ned Gruenhagen, Ph.D.  
U.S. Department of Interior  
Bureau of Reclamation  
1243 N St.  
Fresno, CA 93721-1813

Re: Endangered Species Act Section 7(a)(2) concurrence letter for the Robles Diversion Dam Fish Passage Facility Forebay Restoration Project

Dear Dr. Gruenhagen:

On August 21, 2019, NOAA's National Marine Fisheries Service (NMFS) received the Bureau of Reclamation's (Reclamation) request for written concurrence that the proposed Robles Forebay Restoration Project is not likely to adversely affect endangered steelhead (*Oncorhynchus mykiss*) or its designated critical habitat under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA, implementing regulations at 50 CFR 402, and agency guidance for preparation of letters of concurrence.

Updates to the regulations governing interagency consultation (50 CFR part 402) will become effective on September 26, 2019 [84 FR 44976]. Because this consultation was pending and will be completed prior to that time, we are applying the previous regulations to the consultation. However, as the preamble to the final rule adopting the new regulations noted, "[t]his final rule does not lower or raise the bar on section 7 consultations, and it does not alter what is required or analyzed during a consultation. Instead, it improves clarity and consistency, streamlines consultations, and codifies existing practice." Thus, the updated regulations would not be expected to alter our analysis.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Public Consultation Tracking System (<https://pcts.nmfs.noaa.gov/pcts-web/homepage.pcts>). A complete record of this consultation is on file at NMFS' Southern California Coastal Office in Long Beach, California.

## Action Area

The action area involves the 4.61-acre Robles forebay and overflow channel immediately downstream of the Robles Diversion Dam, as depicted in Figure 2 of Reclamation's August 20,



2019, Biological Evaluation (BE) for the proposed action. Both the forebay and the overflow channel are in the main stem Ventura River, separated by the timber cut-off wall that forms a portion of the Robles Diversion Dam.

### **Proposed Action**

Under the proposed action, Reclamation and the Corps would authorize the owner of the Robles Diversion Dam, Casitas Municipal Water District (Casitas), to conduct sediment and vegetation-removal activities pursuant to the August 20, 2019, BE, Reclamation's revisions to the proposed action, which NMFS received on August 22, 2019, and the proposed Water Diversion Plan received by NMFS on August 15, 2019. The proposed activities involve heavy equipment removing approximately 50,000 cubic yards of sediment (and emergent vegetation) that accumulated in the forebay following the 2017 Thomas Fire, during a projected work schedule of 40 to 60 days in 2019. All in-channel maintenance must be completed by November 30, 2019, as described in NMFS' March 31, 2003 Robles Diversion Fish Passage Facility (Facility) biological opinion (BiOp). Sediment removed from the forebay will be used to restore any storm-eroded areas along the Timber Cutoff Wall (4.12 acres); any remaining sediment would be placed along the overflow channel within 1,600 feet downstream of the diversion (i.e., the Timber Cutoff Wall and Robles Diversion Dam). The proposed sediment disposal site is downstream of the Timber Cutoff Wall, and the proposed action specifies that disposal activities would not impede surface flow in the Ventura River (Figure 2 of the BE).

Prior to heavy equipment beginning work, the work area will be prepared and precautions instituted for the purpose of reducing the likelihood of adverse effects to endangered steelhead and designated critical habitat for the species. In this regard, if water is flowing into the forebay, it will be temporarily diverted to isolate the work area from flowing water. A sandbag cofferdam will be erected to divert surface water into a doubly screened (3-mm mesh) 10 to 24-inch diameter pipe as described in the August 15, 2019, Water Diversion Plan. The pipe will be non-metal and light colored to minimize temperature increases. The proposed screening at the diversion intake would prevent downstream movement of steelhead into the work area; the steep sheet flow at the angled drop at the downstream end of the pipe is intended to prevent upstream movement. The screened intake will be checked at least three times each day to ensure any impinged debris is removed from the outer screen. Once the sediment and vegetation has been removed from the forebay, a small channel will be constructed to restore flows to the forebay and the fish passage facilities, consistent with the BiOp<sup>1</sup>. The description of the proposed action provides that the sediment and vegetation-removal activities would be performed within a single year.

### **Interrelated or Interdependent Actions**

There is no interrelated or interdependent action associated with the proposed action that would affect listed salmonids in the action area.

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<sup>1</sup> The current NMFS March 31, 2003 biological opinion for the Construction and Operation of the Robles Diversion Fish Passage Facility covers the proposed action when the Ventura River channel is dry in the action area; however, since there currently is flow in the action area Reclamation developed a BE for the project and requested concurrence that the proposed action is not likely to adversely affect steelhead or their designated habitat.

## **Action Agency's Effects Determination**

Reclamation and the Corps have determined that implementation of the proposed action may affect, but is not likely to adversely affect endangered steelhead or designated critical habitat for this species. Reclamation based their determination on the rationale that no upstream or downstream steelhead passage has been detected in recent monitoring (January – August 2019), and the characteristically low perceived population in the river below Matilija Dam and the Facility make it unlikely that steelhead are present in the vicinity of the Facility (Reclamation 2019).

## **Consultation History**

On July 16, 2019, Reclamation requested informal consultation with NMFS for the proposed action. During pre-consultation technical assistance for this project, Reclamation, California Department of Fish and Wildlife (CDFW) and NMFS discussed the inclusion of measures to avoid or reduce adverse effects to listed species and critical habitat. On August 8, 2019, NMFS, CDFW and Reclamation teleconferenced to discuss the proposed stream diversion, including to recommend screening the intake of the proposed diversion pipe. On August 15, 2019, Reclamation sent NMFS a revised stream-diversion plan that included the screening measures discussed in the August 8, 2019, teleconference. On August 21, 2019, Reclamation sent NMFS a revised BE, and on August 22, 2019, Reclamation sent NMFS the revised proposed action.

The proposed action involves the U.S. Army Corps of Engineers (Corps), owing to the Corps' Clean Water Act Section 404 permit action. In a letter dated August 29, 2019, the Corps stated they are "a partner agency" on Reclamation's proposed action. However, Reclamation is the lead agency for ESA compliance.

## **ENDANGERED SPECIES ACT**

### **Effects of the Action**

Under the ESA, "effects of the action" means the direct and indirect effects of an action on the listed species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR 402.02). The applicable standard to find that a proposed action is not likely to adversely affect listed species or critical habitat is that all of the effects of the action are expected to be discountable, insignificant, or completely beneficial. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur.

The effects of the proposed action on designated critical habitat for endangered steelhead are expected to be insignificant. Our basis for this conclusion is described as follows, beginning with the anticipated implications of the temporary loss of living space.

Although the proposed action will cause the temporary loss of designated critical habitat, and therefore living space, for endangered steelhead, we expect the related effects to be insignificant because the habitat in the Robles forebay is primarily limited to serving as a freshwater migratory corridor. In addition, the loss of the living space will be temporary because water flow will be returned to the forebay once the activities to remove the sediment and vegetation are completed.

The removal of sediment and vegetation is expected to have discountable effects on designated critical habitat. Re-routing the streamflow through the Facility after the debris is removed is anticipated to cause only minor increases in turbidity concentrations downstream of the forebay, owing in part to use of the minimization and avoidance measures.

Placing a portion of the removed sediment downstream of the Robles Diversion Dam is expected to have beneficial effects on designated critical habitat. The sediment grain size sampling results presented in Appendix A of the BE indicate that the substrate material evaluated in Robles forebay consisted of a heterogeneous mixture of sand, gravel, cobbles and boulders with a relatively low amount of fines. While the forebay and neighboring areas contain gravel, a natural riffle-pool sequence to encourage spawning in the area has not been observed. Therefore, the proposal to relocate the removed sediment downstream of the Robles Diversion Dam may promote a freshwater spawning area in this area of the Ventura River where gravel and cobble are currently limited.

The effects of the proposed action on endangered steelhead are expected to be discountable. As a matter of background, the principal mechanism for an effect to steelhead involves isolating the work space from flowing water. As a result, the context for our effects assessment here involves the potential effects of the temporary stream diversion on the species. In this context, temporarily routing streamflow around the work area is not expected to impact steelhead for at least a few reasons. First, we do not expect the species to be present when the sediment and vegetation is removed owing to recent surveys of the area, and the action is confined to late summer and fall when surface flow is likely to be negligible if present. Therefore, it is unlikely that a steelhead will be in the Facility forebay prior to dewatering the site. Second, the proposed action provides that the forebay and all neighboring wetted areas will be surveyed by Casitas biologists before and during the dewatering process; if a steelhead is observed at any time during the proposed action, all work will stop, the water diversion will be removed and Reclamation will initiate formal ESA consultation with NMFS. Third, although the proposed action would cause a temporary loss of service to endangered steelhead (owing to the dewatered living space), the effects to endangered steelhead are expected to be discountable because steelhead are not expected to be present in the forebay or broader work area when the area is dewatered.

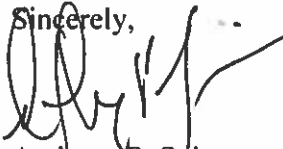
## **Conclusion**

Based on this analysis, NMFS concurs with Reclamation that the proposed action is not likely to adversely affect endangered steelhead or designated critical habitat for this species within the action area of the Ventura River.

## **Reinitiation of Consultation**

Reinitiation of consultation is required and shall be requested by Reclamation or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter; or if (3) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA portion of this consultation.

Please contact Rick Bush at (562) 980-3562 or via email at [Rick.Bush@noaa.gov](mailto:Rick.Bush@noaa.gov) if you have a question concerning this letter or if you would like additional information.

Sincerely,  


Anthony P. Spina  
Chief, Southern California Branch  
California Coastal Office

cc: Antal Azijj, U.S. Army Corps of Engineers, Ventura  
Mary Larson, California Department of Fish and Game, Los Alamitos  
Chris Dellith, U.S. Fish and Wildlife Service, Ventura  
Administrative file#: 151422SWR2002PR6168